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KEATING DENTAL ARTS, INC.

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

13 JAMES R. GLIDEWELL DENTAL
14 CERAMICS, INC. dba GLIDEWELL
15 LABORATORIES,
16 Plaintiff,
17 v.
18 KEATING DENTAL ARTS, INC.
19 Defendant.
20
21 AND RELATED COUNTERCLAIMS.
22
23 Civil Action No.
24 SACV11-01309-DOC(ANx)
25
26 KEATING DENTAL ARTS,
27 INC.'S RESPONSES TO
28 PLAINTIFF'S SECOND SET
29 OF REQUESTS FOR
30 PRODUCTION OF
31 DOCUMENTS (NOS. 43-51)
32
33 Honorable David O. Carter

1 Defendant Keating Dental Arts, Inc. (“Keating”), pursuant to Rules 26
2 and 34 of the Federal Rules of Civil Procedure, hereby responds and objects as
3 follows to Plaintiff James R. Glidewell Dental Ceramics, Inc. d/b/a Glidewell
4 Laboratories’ (“Glidewell”) Second Set of Requests for Production (Nos. 43-51)
5 served on September 21, 2012.

6 **I. PRELIMINARY STATEMENT**

7 1. These responses are based upon information currently available to
8 Keating and its counsel and reflect the current state of Keating’s knowledge,
9 understanding and belief respecting the matters about which inquiry was made.
10 However, discovery and fact investigation are in its early stages, and Keating
11 has not completed its own discovery or investigation of the facts relating to this
12 action and anticipates that, as this action proceeds, further facts may be
13 discovered. Therefore, Keating reserves the right to supplement its responses to
14 these Requests in any manner it deems appropriate. Moreover, these responses
15 are made without prejudice to Keating’s right to present at trial additional
16 evidence as may later be discovered or evaluated.

17 2. In agreeing to produce documents responsive to a particular
18 Request, Keating does not represent that such documents and things necessarily
19 exist or are relevant or material in this litigation. Furthermore, Keating does not
20 represent that its initial production of documents and things in response to these
21 Requests will consist of every responsive, relevant, and non-privileged
22 document and thing that is in the custody and control of Keating. Keating’s fact
23 investigation is continuing, and additional responsive documents and things may
24 be identified and produced.

25 3. Notwithstanding Keating’s responses contained herein, Keating
26 reserves its right to later object to Glidewell’s use of the information,
27 documents, or things produced in response to these Requests. Such objections,
28

1 which are not waived by Keating's responses, include but are in no way limited
2 to the following:

- 3 a. objections concerning the competence, authenticity, relevance,
4 materiality, privilege, and admissibility with regard to the
5 information and/or documents identified or produced in response to
6 these Requests, which may arise in any subsequent proceeding in,
7 or the trial of, this or any other action;
- 8 b. objections to the use of the information or documents for any
9 purpose, including, without limitation, their use in any subsequent
10 proceeding in, or the trial of, this or any other action;
- 11 c. the right to assert or raise, in this action or in any other context,
12 attorney-client privilege, the work product immunity, the
13 protections afforded by Rule 26(b)(3), Rule 26(b)(4)(B) or
14 Rule 26(b)(4)(C) of the Federal Rules of Civil Procedure, the right
15 of privacy, or any other applicable privilege or protective doctrine;
16 and
- 17 d. objections on any ground at any time to other interrogatories,
18 document requests, or other discovery relating to information or
19 documents produced or the subject matter thereof.

20 4. Without waiving, modifying, or limiting any of the following
21 General Objections, each of which is expressly incorporated into the specific
22 responses below as if fully stated therein, Keating further reserves the right to
23 revise, correct, add to, or clarify any of its objections hereto, as discovery is still
24 ongoing.

25 5. Keating's response to any Request herein is in no way intended to
26 constitute an admission or acknowledgment that the Request is proper; that the
27 documents or things it seeks are within the proper bounds of discovery; that any
28 responsive documents or things exist or are within Keating's possession,

1 custody, or control; or that Requests for similar documents or things will be
2 treated in a like manner. Further, any response herein shall not be construed as
3 a waiver of Keating's right to contend that any documents or things produced
4 are inadmissible, irrelevant, immaterial, or otherwise objectionable if used by
5 Glidewell.

6 6. To the extent that the Requests may be construed as requesting an
7 admission of fact, Keating's responses are not nor should they be construed as
8 either admitting or denying any fact in connection with the Requests.

9 **II. GENERAL OBJECTIONS**

10 1. Keating objects to the Definitions and Instructions in Glidewell's
11 Document Requests to the extent they fail to comply with, or impose obligations
12 in excess of, the Federal Rules of Civil Procedure or the Local Rules of this
13 Court.

14 2. Keating objects to these Requests to the extent that they are
15 untimely as they were served on Keating after the Court's cutoff for written
16 discovery as stated in its Scheduling Order entered on December 16, 2011. In
17 the Court's Order, the discovery cut-off date was set for October 29, 2012 with
18 all written discovery to be served at least forty-five (45) days before the
19 discovery cut-off date. These Requests were served by mail on September 21,
20 2012.

21 3. Keating objects to these Requests to the extent that they seek the
22 production or disclosure of information or documents not relevant to any party's
23 claims or defenses in this action and not reasonably calculated to lead to the
24 discovery of admissible evidence. No production of documents shall be deemed
25 to constitute any agreement or concession that the subject matter thereof is
26 relevant to this action, and production is made without waiving or intending to
27 waive any objections as to relevancy, privilege or admissibility of any
28

1 information provided in response to these Requests in any subsequent
2 proceeding or at trial of this action on any ground.

3 4. Keating objects to these Requests to the extent that they seek to
4 compel production or disclosure of confidential or privileged documents under
5 the attorney-client privilege or the common interest privilege, or of documents
6 that are non-discoverable under the attorney work product doctrine or other
7 applicable privileges, laws, or doctrines that prohibit or otherwise limit
8 discovery. Keating has stated its privilege objections expressly to each Request
9 which would, in its view, reasonably be interpreted to encompass privileged
10 documents or information. To the extent that any other Requests encompass
11 privileged documents or information, however, Keating hereby incorporates its
12 general objection.

13 5. Keating objects to these Requests to the extent they seek
14 documents and things that are subject to one or more confidentiality agreements
15 with non-parties to this action, which agreements restrict Keating's ability to
16 disclose such documents and things.

17 6. Keating objects to these Requests to the extent that they are vague,
18 ambiguous, duplicative, and not reasonably calculated to lead to the discovery
19 of admissible evidence.

20 7. Keating objects to these Requests to the extent they are overly
21 broad and unduly burdensome, particularly to the extent that they do not
22 identify specific documents and to the extent that representative samples would
23 be sufficient, and thus the Request would require an unreasonably detailed and
24 extensive search of all, or a substantial portion, of Keating's documents and
25 files.

26 8. Keating objects to these Requests to the extent they seek "all
27 documents" or "all documents and things" concerning a particular subject on the
28 grounds that Keating could not possibly represent that its responses reflect or

1 include “all” potentially responsive documents located anywhere within the
2 possession, custody, or control of Keating, as that would require Keating to
3 request and search for documents from every person in the company. Keating
4 objects to performing searches of such breadth on the grounds of undue burden
5 and expense. In its search for relevant documents, Keating has made, and will
6 make, a reasonable search as required by the Federal Rules of Civil Procedure.

7 9. Keating objects to these Requests to the extent they seek to require
8 Keating to provide information and/or documents and things beyond what is in
9 Keating’s possession, custody, or control and can be located after a reasonable
10 search of its own files at its principal offices and facilities and from reasonable
11 inquiry of its present employees, on the grounds that such discovery would be
12 unreasonably cumulative and unduly burdensome. The responses provided
13 herein are based on information reasonably available to Keating at this time.

14 10. Keating objects to the Requests to the extent that they purport to
15 require Keating to search for, investigate, obtain, review, and produce
16 information or documents within the possession, custody, or control of entities
17 other than Keating. Keating has responded to the Requests based on the
18 information available to it at this time.

19 11. Keating objects to the Request to the extent they call upon Keating
20 to provide documents and things that are publicly available and of no greater
21 burden for Glidewell to obtain than for Keating to obtain.

22 12. Keating objects to these Requests to the extent that they call for a
23 legal conclusion in interpreting and/or responding to any particular request.

24 13. Keating objects to Glidewell’s definition of the term
25 “DEFENDANT” to the extent that it purports to include persons and entities
26 that are not parties to this lawsuit and over whom Keating has no control and/or
27 who are not properly subject to Rule 34. These responses are made solely on
28 behalf of Keating Dental Arts, Inc.

1 14. Keating objects to Glidewell's definitions of the term "relating to"
2 to the extent it is overbroad, unduly burdensome, not reasonably calculated to
3 lead to the discovery of admissible evidence, and purports to impose discovery
4 obligations greater than those imposed by Rule 34 Fed. R. Civ. P.

5 15. Keating objects to Glidewell's definition of the term "document" to
6 the extent it is overbroad, unduly burdensome, not reasonably calculated to lead
7 to the discovery of admissible evidence, and purport to impose discovery
8 obligations greater than those imposed by Rule 34 Fed. R. Civ. P.

9 16. Keating objects to Glidewell's definition of the term "person" to
10 the extent it is overbroad, unduly burdensome, not reasonably calculated to lead
11 to the discovery of admissible evidence, and purports to impose discovery
12 obligations greater than those imposed by Rule 34 Fed. R. Civ. P.

13 Subject to and without waiving any of the foregoing, Keating responds to
14 Glidewell's Document Requests as set forth below.

15 **III. SPECIFIC OBJECTIONS AND RESPONSES**

16 **DOCUMENT REQUEST NO. 43:**

17 All DOCUMENTS and THINGS RELATING TO whether dentists who
18 purchase KDZ BRUXER crowns use them to repair teeth damaged by bruxism.

19 **RESPONSE TO DOCUMENT REQUEST NO. 43:**

20 Keating objects to this request on the grounds that it is vague, overly
21 broad, unduly burdensome and not calculated to lead to the discovery of
22 admissible evidence. Keating further objects to the extent that the request seeks
23 documents protected by the attorney client privilege and/or work product
24 doctrine.

25 Without waiving these objections, Keating will produce responsive
26 documents to the extent not already produced.

27 **DOCUMENT REQUEST NO. 44:**

28 All DOCUMENTS and THINGS RELATING TO the percentage of KDZ

1 BRUXER crowns used to repair teeth damaged by bruxism as compared to
2 other uses of such crowns.

3 **RESPONSE TO DOCUMENT REQUEST NO.44:**

4 Keating objects to this request on the grounds that it is vague, overly
5 broad, unduly burdensome and not calculated to lead to the discovery of
6 admissible evidence. Keating further objects to the extent that the request seeks
7 documents protected by the attorney client privilege and/or work product
8 doctrine.

9 Without waiving these objections, Keating will produce responsive
10 documents to the extent not already produced.

11 **DOCUMENT REQUEST NO. 45:**

12 All DOCUMENTS and THINGS RELATING TO any third party selling
13 or offering to sell a ceramic restoration under a trademark having the term
14 BRUX as a part or portion thereof.

15 **RESPONSE TO DOCUMENT REQUEST NO.45:**

16 Keating objects to this request on the grounds that it is vague, overly
17 broad, and unduly burdensome. Keating further objects to the extent that the
18 request seeks documents protected by the attorney client privilege and/or work
19 product doctrine.

20 Without waiving these objections, Keating will produce responsive
21 documents to the extent not already produced.

22 **DOCUMENT REQUEST NO. 46:**

23 All DOCUMENTS and THINGS RELATING TO surveys, studies, or
24 research papers conducted by Defendant or on behalf of Defendant in regard to
25 alleged genericness of the BRUXZIR mark.

26 **RESPONSE TO DOCUMENT REQUEST NO.46:**

27 Keating objects to this request on the grounds that it is vague, overly
28 broad, and unduly burdensome. Keating further objects to the extent that the

1 request seeks documents protected by the attorney client privilege and/or work
2 product doctrine.

3 Without waiving these objections, Keating will produce responsive
4 documents to the extent not already produced.

5 **DOCUMENT REQUEST NO. 47:**

6 All DOCUMENTS and THINGS RELATING TO communications
7 received by Defendant from dentists or dental offices that relate to alleged
8 genericness of the BRUXZIR mark.

9 **RESPONSE TO DOCUMENT REQUEST NO.47:**

10 Keating objects to this request on the grounds that it is vague, overly
11 broad and unduly burdensome. Keating further objects to the extent that the
12 request seeks documents protected by the attorney client privilege and/or work
13 product doctrine.

14 Without waiving these objections, Keating will produce responsive
15 documents to the extent not already produced.

16 **DOCUMENT REQUEST NO. 48:**

17 All DOCUMENTS and THINGS RELATING TO complaints, returns,
18 grievances, or criticisms of Defendant's products sold under the KDZ BRUXER
19 mark.

20 **RESPONSE TO DOCUMENT REQUEST NO.48:**

21 Keating objects to this request on the grounds that it is vague, overly
22 broad, unduly burdensome and not calculated to lead to the discovery of
23 admissible evidence. Keating further objects to the extent that the request seeks
24 documents protected by the attorney client privilege and/or work product
25 doctrine.

26 Without waiving these objections, Keating will produce responsive
27 documents to the extent not already produced.

1 **DOCUMENT REQUEST NO. 49:**

2 All DOCUMENTS and THINGS RELATING TO communications
3 between Keating Dental Arts and third parties in regard to the BRUXZIR mark
4 being allegedly generic or descriptive.

5 **RESPONSE TO DOCUMENT REQUEST NO.49:**

6 Keating objects to this request on the grounds that it is vague, overly
7 broad, unduly burdensome and not calculated to lead to the discovery of
8 admissible evidence. Keating further objects to the extent that the request seeks
9 documents protected by the attorney client privilege and/or work product
10 doctrine.

11 Without waiving these objections, Keating will produce responsive
12 documents to the extent not already produced.

13 **DOCUMENT REQUEST NO. 50:**

14 All DOCUMENTS and THINGS in which the term BRUXZIR is used
15 generically or descriptively.

16 **RESPONSE TO DOCUMENT REQUEST NO.50:**

17 Keating objects to this request on the grounds that it is overly broad,
18 unduly burdensome and seeks documents and things already in the custody and
19 control of Glidewell. Keating further objects to the extent that the request seeks
20 documents protected by the attorney client privilege and/or work product
21 doctrine.

22 Without waiving these objections, Keating will produce responsive
23 documents to the extent not already produced.

24 **DOCUMENT REQUEST NO. 51:**

25 All DOCUMENTS and THINGS received by Defendant from its dentist
26 customers which refer to either of the terms BRUXZIR or bruxer and are dated
27 prior to May, 2011.

28 ///

RESPONSE TO DOCUMENT REQUEST NO.51:

Keating objects to this request on the grounds that it is vague, overly broad, unduly burdensome and not calculated to lead to the discovery of admissible evidence. Keating further objects to the extent that the request seeks documents protected by the attorney client privilege and/or work product doctrine.

Without waiving these objections, Keating will produce responsive documents to the extent not already produced.

KNOBBE, MARTENS, OLSON & BEAR, LLP

11 Dated: October 25, 2012 By: /s/ Lynda J. Zadra-Symes
12 Lynda J. Zadra-Symes
13 Jeffrey L. Van Hoosear
David G. Jankowski

Attorneys for Plaintiff,
KEATING DENTAL ARTS, INC.

PROOF OF SERVICE

I am a citizen of the United States of America and I am employed in
Irvine, California. I am over the age of 18 and not a party to the within action.
My business address is 2040 Main Street, Fourteenth Floor, Irvine, California. I
am readily familiar with the firm's business practices for the collection and
processing of correspondence for mailing, and that mail so processed will be
deposited the same day during the ordinary course of business.

8 On October 25, 2012, I caused the within KEATING DENTAL ARTS,
9 INC.'S RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS FOR
10 PRODUCTION OF DOCUMENTS (NOS. 43-51) to be served on the parties or
11 their counsel shown below, by placing it in a sealed envelope addressed as
12 follows:

13 || **Via Electronic and First Class Mail:**

14 Leonard Tachner, Esq.
15 LEONARD TACHNER, A Professional Law Corp.
17961 Sky Park Circle, Suite 38-E
16 Irvine, CA 92614-6364
Email: ltachner@aol.com

17 I declare that I am employed in the office of a member of the bar of this
18 Court at whose direction the service was made.

19 Executed on October 25, 2012 at Irvine, California.

Claire Ast

Claire A. Stoneman